

# ELLISON, SCHNEIDER & HARRIS L.L.P.

ANNE J. SCHNEIDER  
1947-2010

CHRISTOPHER T. ELLISON  
JEFFERY D. HARRIS  
DOUGLAS K. KERNER  
ROBERT E. DONLAN  
ANDREW B. BROWN  
GREGGORY L. WHEATLAND  
CHRISTOPHER M. SANDERS  
LYNN M. HAUG  
PETER J. KIEL

## ATTORNEYS AT LAW

2600 CAPITOL AVENUE, SUITE 400  
SACRAMENTO, CALIFORNIA 95816  
TELEPHONE: (916) 447-2166  
FACSIMILE: (916) 447-3512  
<http://www.eslawfirm.com>

BRIAN S. BIERING  
JEDEDIAH J. GIBSON  
CHASE B. KAPPEL  
SHANE E. C. McCOIN  
SAMANTHA G. POTTENGER

OF COUNSEL:  
ELIZABETH P. EWENS  
CHERYL L. KING  
MARGARET G. LEAVITT  
RONALD LIEBERT

November 15, 2012

Commissioner Karen Douglas  
Commissioner Carla Peterman  
Hidden Hills Solar Electric Generating System (11-AFC-2)  
Rio Mesa Solar Electric Generating Facility (11-AFC-04)  
California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814



Re: Hidden Hills Solar Electric Generating System (11-AFC-2) and Rio Mesa Solar Electric Generating Facility (11-AFC-04): Notice Pursuant to 20 C.C.R. 1716(f): Staff Data Requests Set 3.

Dear Commissioners Douglas and Peterman:

Pursuant to Section 1716(f) of the Commission's regulations, Hidden Hills Solar I, LLC and Hidden Hills Solar II, LLC, and Rio Mesa Solar I, LLC and Rio Mesa Solar II, LLC (collectively, the "Applicants") hereby file this notice of objection to Data Requests Set 3, issued by Staff on October 26, 2012 ("Set 3").

## I. GENERAL OBJECTIONS

Section 1716(e) of the Commission's regulations provides: "All requests for information shall be submitted no later than 180 days from the date the commission determines an

application is complete, unless the committee allows requests for information at a later time for good cause shown.”<sup>1</sup>

The Commission determined the Application for Certification (“Application”) of the Hidden Hills Solar Electric Generating System (“HHSEGS”) to be complete on October 5, 2011. As a result, the deadline for submitting requests for information was 180 days thereafter, or by April 2, 2012. These data requests were promulgated over a year later on October 26, 2012. The Commission determined the Application for Certification (“Application”) of the Rio Mesa Solar Electric Generating Facility (“RMS”) to be complete on December 14, 2011. The deadline for submitting requests for information was September 21, 2012, pursuant to an order from the Committee in that proceeding. Therefore, Applicants object to Set 3 in its entirety as untimely.

Moreover, as Section 1716(e) provides, only the Committee can allow for later requests. Staff or any other party must first make a specific request to the Committee for leave to file based on the Committee’s finding of good cause. A party cannot simply assert good cause and promulgate further data requests without first asking the Committee for leave and having such leave granted. No such request was made in this case. No finding of good cause has been made by the Committee in either proceeding.

Notwithstanding the foregoing, although Set 3 is untimely, without waiving such objections, Applicants will respond to those specific requests that are relevant and for which information is reasonably available. Applicants will file, in a timely manner, these responses to Set 3, on or before November 23, 2012.

## **II. SPECIFIC OBJECTIONS**

Section 1716 of the Commission's regulations provides:

Any party may request from the applicant any information reasonably available to the applicant which is relevant to the notice or application proceedings or reasonably necessary to make any

---

<sup>1</sup> 20 C.C.R. § 1716(e); emphasis added.

decision on the notice or application. All such requests shall include the reasons for the request.<sup>2</sup>

Pursuant to Section 1716, a party may request from an applicant information that is *reasonably available* to it and relevant to any decision the Commission must make. Factors considered by the Commission to determine whether the information requested is discoverable include the following: (1) the relevance of the information; (2) whether the information is available to the applicant, or from some other source, or whether the information has been provided in some other form; (3) whether the request is for data, analysis, or research; and (4) the burden on the applicant to provide the data.<sup>3</sup> As explained in further detail below, Applicants object to the following data requests as not meeting the requirements of Section 1716.

#### **A. Data Request 200**

Data Request 200 asks whether Mr. Santolo had “direction provided to him under a contract or purchase order”, and requests that the Applicants “provide a document that lays out the direction that BSE provided to him.” Applicants object to this data request as argumentative, as it assumes that specific “direction” was given to a scientist. Moreover, this information is privileged, is not relevant to this Application, and is not reasonably necessary to make any decision on the Application. Notwithstanding these objections, Applicant will provide the scope of work developed by Mr. Santolo that provided the basis for the flux study in its responses to Set 3.

#### **B. Data Request 202**

Data Request 202 asks whether a “final report or summary was prepared for Mr. Santolo’s activities at SEDC,” and requests information relating to such a report. Applicants object to this data request as it requests privileged information, and as a matter of public policy,

---

<sup>2</sup> 20 C.C.R. § 1716(b).

<sup>3</sup> See, Committee Ruling on Intervenor Center for Biological Diversity’s Petition to Compel Data Requests, Docket No. 07-AFC-6 (Dec. 26, 2008).

Applicants' consultants must be afforded the ability to engage in academic studies, reach conclusions, and make recommendations without fear of publicity of nascent analysis (the policy set forth in Government Code section 6255), and to enjoy the protections for drafts, notes, and preliminary personal memoranda (the policy set forth in Government Code Section 6255(a).) Moreover, Data Request 202 requests information that is neither relevant nor reasonably necessary for a Commission decision in this proceeding. Therefore, Applicants object to Data Request 202 for the reasons set forth above. Notwithstanding this objection, Applicants will be submitting a report prepared by Mr. Santolo, which is responsive to Data Request 202, on or before November 23, 2012.

### **C. Data Requests 205, 206, 207 and 208**

Data Request 205 requests "a functional electronic copy of the models used to produce the data and the flux isopleths figures" provided in response to Data Request 159 issued by Staff in the Rio Mesa Solar Electric Generating Facility (11-AFC-04). Companion Data Request 206 requests "all documentation and manuals necessary to operate the model." Data Request 207 requests "a copy of all model inputs used to derive the figures provided in response to Rio Mesa data request #159." Finally, Data Request 208 asks if "portions" of this information can be provided under confidential cover. Applicants object to these Data Requests as follows.

The information requested is privileged and not subject to production because it is a trade secret.<sup>4</sup> California Civil Code section 3426.1(d) defines a "trade secret" as follows:

(d) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and

---

<sup>4</sup> See, Cal. Evidence Code § 1060.

(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The model and related information are trade secrets because the information is the foundation of Applicants' parent company's, BrightSource Energy, proprietary technology, and the information derives independent economic value from not being generally known to the public or to other persons or competing companies who can obtain economic value from its disclosure or use. The information requested, and the proprietary model in particular, contains trade secrets and otherwise commercially sensitive data the disclosure of which would cause loss of a competitive advantage. As entities operating in the competitive and dynamic renewable energy market, the Applicants hold such information in the highest confidence. Moreover, this information is the subject of efforts to maintain its secrecy, and is not publicly available. Therefore, as trade secrets, this information is privileged.

Second, even if the information requests were not a trade secret, a "functional electronic copy of the models" is not readily available to Applicants in a form that can be provided to Staff, and would be burdensome for the Applicants to provide. The proprietary models are not simple computer programs that can be transferred onto a compact disc and downloaded onto a typical desktop computer for use. Instead, the models are generated using multiple proprietary programs that require specialized computer software and hardware, in addition to extensive training, to operate.

Finally, the information requested is both redundant and untimely. It is redundant in that the HHSEGS Applicant<sup>5</sup> and the RMS Applicant<sup>6</sup> have already provided substantial modeling data (for example, see Data Response Set 2D-2) on April 16, 2012. These prior filings included information relevant to the projects, which were generated using the same models that produced

---

<sup>5</sup> [http://www.energy.ca.gov/sitingcases/hiddenhills/documents/applicant/2012-04-16\\_Data\\_Response\\_Set\\_2D-2\\_TN-64906.pdf](http://www.energy.ca.gov/sitingcases/hiddenhills/documents/applicant/2012-04-16_Data_Response_Set_2D-2_TN-64906.pdf)

<sup>6</sup> [http://www.energy.ca.gov/sitingcases/riomesa/documents/applicant/2012-04-16\\_Applicants\\_Supplemental\\_Response\\_2\\_to\\_DR\\_Set\\_1A\\_TN-64814.pdf](http://www.energy.ca.gov/sitingcases/riomesa/documents/applicant/2012-04-16_Applicants_Supplemental_Response_2_to_DR_Set_1A_TN-64814.pdf)

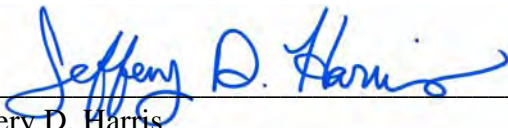
the responses to Rio Mesa Data Request 159. In terms of being untimely, any questions or issues with such information should have been raised earlier in this proceeding, rather than six months after such information was submitted. Applicants object to Data Requests 205, 206, 207, and 208.

Thank you for your time and consideration.

Sincerely,

ELLISON, SCHNEIDER & HARRIS L.L.P.

By

  
Jeffery D. Harris

Christopher T. Ellison

Brian S. Biering

Samantha G. Pottenger

Attorneys for Applicants

STATE OF CALIFORNIA

Energy Resources Conservation  
and Development Commission

|  |   |                     |
|--|---|---------------------|
| Application for Certification for the HIDDEN | ) |                     |
| HILLS SOLAR ELECTRIC GENERATING              | ) | Docket No. 11-AFC-2 |
| SYSTEM PROJECT                               | ) |                     |
| _____  | ) |                     |

**PROOF OF SERVICE**

I, Karen A. Mitchell, declare that on November 15, 2012, I served the attached *Notice Pursuant to 20 C.C.R. 1716(f): Staff Data Requests Set 3* via electronic and U.S. mail to all parties on the attached service list.

I declare under the penalty of perjury that the foregoing is true and correct.



\_\_\_\_\_  
Karen A. Mitchell

**SERVICE LIST**  
**11-AFC-2**

**APPLICANT**

Stephen Wiley  
BrightSource Energy  
1999 Harrison Street, Suite 2150  
Oakland, CA 94612-3500  
[swiley@brightsourceenergy.com](mailto:swiley@brightsourceenergy.com)

Bradley Brownlow  
Michelle L. Farley  
BrightSource Energy  
1999 Harrison Street, Suite 2150  
Oakland, CA 94612-3500  
[bbrownlow@brightsourceenergy.com](mailto:bbrownlow@brightsourceenergy.com)  
[mfarley@brightsourceenergy.com](mailto:mfarley@brightsourceenergy.com)

Clay Jensen  
Gary Kazio  
BrightSource Energy  
410 South Rampart Blvd., Suite 390  
Las Vegas, Nevada 89145  
[cjensen@brightsourceenergy.com](mailto:cjensen@brightsourceenergy.com)  
[gzazio@brightsourceenergy.com](mailto:gzazio@brightsourceenergy.com)

**APPLICANT'S CONSULTANTS**

Susan Strachan  
Strachan Consulting, LLC  
P.O. Box 1049  
Davis, CA 95617  
[susan@strachanconsult.com](mailto:susan@strachanconsult.com)

John Carrier  
CH2MHill  
2485 Natomas Park Drive, Suite 600  
Sacramento, CA 95833-2987  
[jcarrier@ch2m.com](mailto:jcarrier@ch2m.com)

**COUNSEL FOR APPLICANT**

Chris Ellison  
Jeff Harris  
Samantha Pottenger  
Ellison, Schneider and Harris, LLP  
2600 Capitol Avenue, Suite 400  
Sacramento, CA 95816-5905  
[cte@eslawfirm.com](mailto:cte@eslawfirm.com)  
[jdh@eslawfirm.com](mailto:jdh@eslawfirm.com)  
[sgp@eslawfirm.com](mailto:sgp@eslawfirm.com)

**INTERVENORS**

Jon William Zellhoefer  
P.O. Box 34  
Tecopa, CA 92389  
[jon@zellhoefer.info](mailto:jon@zellhoefer.info)

Lisa T. Belenky, Sr. Attorney  
Center for Biological Diversity  
351 California Street, Ste. 600  
San Francisco, CA 94104  
[lbelenky@biologicaldiversity.org](mailto:lbelenky@biologicaldiversity.org)

Ileene Anderson, Public Lands  
Desert Director  
Center for Biological Diversity  
PMB 447  
8033 Sunset Boulevard  
Los Angeles, CA 90046  
[ianderson@biologicaldiversity.org](mailto:ianderson@biologicaldiversity.org)

Jack Prichett  
Old Spanish Trail Association  
857 Nowita Place  
Venice, CA 90291  
[jackprichett@ca.rr.com](mailto:jackprichett@ca.rr.com)

Cindy R. MacDonald  
3605 Silver Sand Court  
N. Las Vegas, NV 89032  
[sacredintent@centurylink.net](mailto:sacredintent@centurylink.net)

Richard Arnold  
P.O. Box 3411  
Pahrump, NV 89041  
[rwarnold@hotmail.com](mailto:rwarnold@hotmail.com)

**INTERESTED AGENCIES**

California ISO  
[e-recipient@caiso.com](mailto:e-recipient@caiso.com)

Great Basin Unified APCD  
Duane Ono  
Deputy Air Pollution Control Officer  
157 Short Street  
Bishop, CA 93514  
[dono@gbuapcd.org](mailto:dono@gbuapcd.org)

Dana Crom, Deputy County Counsel  
County of Inyo  
P.O. Box M  
Independence, CA 93526  
[dcrom@inyocounty.us](mailto:dcrom@inyocounty.us)

Lorinda A. Wichman, Chairman  
Nye County Board of County Supervisors  
P.O. Box 153  
Tonopah, NV 89049  
[lawichman@gmail.com](mailto:lawichman@gmail.com)

L. Darrel Lacy  
Interim General Manager  
Nye County Water District  
2101 E. Calvada Blvd., Suite 100  
Pahrump, NV 89048  
[llacy@co.nye.nv.us](mailto:llacy@co.nye.nv.us)

Michael L. Elliott  
Cultural Resources Specialist  
National Park Service  
National Trails Intermountain Region  
P.O. Box 728  
Santa Fe, NM 87504-0728  
[Michael\\_Elliott@nps.gov](mailto:Michael_Elliott@nps.gov)

Southern Inyo  
Fire Protection District  
Larry Levy, Fire Chief  
P.O. Box 51  
Tecopa, CA 92389  
[sifpd@yahoo.com](mailto:sifpd@yahoo.com)

#### **ENERGY COMMISSION – DECISIONMAKERS**

Karen Douglas  
Commissioner and Presiding Member  
[karen.douglas@energy.ca.gov](mailto:karen.douglas@energy.ca.gov)

Carla Peterman  
Commissioner and Presiding Member  
[carla.peterman@energy.ca.gov](mailto:carla.peterman@energy.ca.gov)

Ken Celli  
Hearing Officer  
[ken.celli@energy.ca.gov](mailto:ken.celli@energy.ca.gov)

Eileen Allen  
Commissioners' Technical Advisor for Facility Siting  
[eileen.allen@energy.ca.gov](mailto:eileen.allen@energy.ca.gov)

Galen Lemei  
Adviser to Commissioner Douglas  
[galen.lemei@energy.ca.gov](mailto:galen.lemei@energy.ca.gov)

Jennifer Nelson  
Advisor to Presiding Member  
[jennifer.nelson@energy.ca.gov](mailto:jennifer.nelson@energy.ca.gov)

Jim Bartridge  
Adviser to Associate Member  
[jim.bartridge@energy.ca.gov](mailto:jim.bartridge@energy.ca.gov)

#### **ENERGY COMMISSION STAFF**

Mike Monasmith  
Senior Project Manager  
[mike.monasmith@energy.ca.gov](mailto:mike.monasmith@energy.ca.gov)

Richard Ratliff  
Staff Counsel IV  
[dick.ratliff@energy.ca.gov](mailto:dick.ratliff@energy.ca.gov)

Kerry Willis  
Staff Counsel  
[kerry.willis@energy.ca.gov](mailto:kerry.willis@energy.ca.gov)

#### **ENERGY COMMISSION – PUBLIC ADVISER**

Jennifer Jennings  
Public Adviser's Office  
[publicadviser@energy.ca.gov](mailto:publicadviser@energy.ca.gov)